

BILL ANALYSIS

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S.B. 1445
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Sixty-one percent of non-aged Texas residents living in the three most populous counties along the Texas-Mexico border are either uninsured or insured through government-sponsored programs, including Medicaid and the Children's Health Insurance Program (CHIP). The lack of private health insurance coverage increases federal, state, and local government healthcare spending. Cost is a significant barrier to obtaining health insurance for both individuals and employers. Cross border health plans present an opportunity to increase rates of private health insurance coverage.

Under cross border health plans, U.S. or Mexican insurers or health maintenance organizations (HMOs) contract with Mexican doctors or medical networks for the provision of non-emergency healthcare in Mexico. Plan enrollees may include U.S. citizens and/or Mexican citizens legally in the U.S. and their dependents. Cross border health plans cost on average 40 percent less than plans that provide healthcare in the U.S.

As proposed, S.B. 1445 amends the Texas Insurance Code to allow U.S.-based insurers and HMOs to offer fully insured cross border group and individual health plans to U.S. and Mexican citizens. This legislation also requires the Texas Department of Insurance to conduct a study on the effectiveness of cross border health plans.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the commissioner of insurance in SECTION 1.001 (Sections 1510.004, 1510.102, 1510.103, 1510.104, and 1510.105, Insurance Code) and SECTION 2.011 (Section 1506.008, Insurance Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subtitle G, Title 8, Insurance Code, by adding Chapter 1510, as follows:

CHAPTER 1510. CROSS BORDER HEALTH BENEFIT PLANS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1510.001. **DEFINITIONS.** Defines "basic health care services," "cross border health benefit plan," "emergency care," "enrollee," "health benefit plan," "health benefit plan issuer," "health care facility," "health care practitioner," "health care provider," and "health maintenance organization."

Sec. 1510.002. **ELIGIBLE ENROLLEES.** Provides that an individual is eligible to receive health care services as an enrollee in a cross border health benefit plan if the individual is a citizen of the United States of America (U.S.), a citizen of the United Mexican States (Mexico) who is legally residing or working in the U.S., or a dependent of a U.S. citizen or Mexican citizen legally residing or working in the U.S.

Sec. 1510.003. **SERVICE AREA.** (a) Authorizes a health benefit plan issuer (plan issuer) that holds a special certificate of authority under this chapter to operate a cross border health benefit plan (plan) to provide health care services to an eligible enrollee in the service area designated by the issuer under Subsection (b).

(b) Authorizes a plan, except as provided by Subsection (c) and Section 1510.102(b), to offer and provide health care services only in the geographic region composed of this state and those Mexican states that are located within 75 miles of the border of this state and Mexico. Requires the plan issuer to designate the service area for the plan, which is authorized to be composed of this state and certain Mexican states.

(c) Requires a plan to provide emergency care in this state and in the service area designated under Subsection (b) to an eligible enrollee.

Sec. 1510.004. GENERAL POWERS AND DUTIES OF COMMISSIONER. (a) Requires the commissioner of insurance (commissioner) to implement and enforce this chapter.

(b) Requires the commissioner to adopt rules in accordance with Subchapter A (Rules), Chapter 36 (Department Rules and Procedures), Insurance Code, as necessary to implement this chapter. Authorizes the commissioner, in adopting those rules, to consult with appropriate authorities in California, other states, and Mexico.

(c) Requires the commissioner to require compliance with any applicable state and federal requirements regarding the use of foreign currency in the payment of services provided by plans, by rule.

(d) Requires the commissioner to prescribe specific oversight requirements for a plan issuer that operates plans, by rule.

(e) Authorizes the commissioner to adopt rules relating to regulation of agents who are citizens of Mexico and who market or sell plans to citizens of this state, in cooperation with the appropriate authorities of Mexico.

Sec. 1510.005. ADVISORY COMMITTEES. (a) Authorizes the commissioner to appoint advisory committees to make recommendations to the commissioner and the Texas Department of Insurance (TDI) regarding the implementation of this chapter.

(b) Authorizes members of an advisory committee appointed under this section to include physicians and other health care practitioners, including health care practitioners who are citizens of Mexico.

Sec. 1510.006. INTERNATIONAL AGREEMENTS. (a) Authorizes the commissioner to formulate and adopt agreements with Mexico regarding plans and to enter into memoranda of understanding with the appropriate authorities of certain Mexican states regarding operation of plans in those states.

(b) Requires the commissioner to submit copies of any agreements or memoranda entered into under this section to the office of the governor.

(c) Provides that any agreement entered into under this section must comply with federal law.

Sec. 1510.007. PREVAILING COMMUNITY STANDARDS. (a) Provides that the delivery of health care services in Mexico through a plan must be based on and determined by the prevailing community standards in Mexico, and provides that the licensing of health care providers who provide those services is governed by the applicable laws of Mexico.

(b) Provides that a health care practitioner providing health care services in Mexico through a plan is not required to be licensed in this state. Provides that the credentialing, peer review, and quality of care standards used by a health care practitioner providing services under a plan is governed by the standards that apply in Mexico and applicable commissioner rules relating to quality of care.

(c) Provides that Chapter 1451 (Access to Certain Practitioners and Facilities), Insurance Code, does not apply to a plan.

[Reserves Sections 1510.008–1510.050 for expansion.]

SUBCHAPTER B. SPECIAL CERTIFICATE OF AUTHORITY

Sec. 1510.051. **ADOPTION OF CROSS BORDER HEALTH BENEFIT PLANS; SPECIAL CERTIFICATE OF AUTHORITY REQUIRED.** Authorizes a plan issuer under this code to engage in the business of insurance in this state to offer plans to provide health care services to eligible enrollees in the service area designated by the issuer under Section 1510.003. Provides that to market, sell, or operate a plan, a plan issuer must hold a special certificate of authority issued by TDI under this chapter.

Sec. 1510.052. **INDIVIDUAL AND GROUP COVERAGE AUTHORIZED.** Authorizes plans to be offered to individuals and employers.

Sec. 1510.053. **COMPLIANCE WITH QUALITY OF CARE REQUIREMENTS.** Provides that a plan issuer that holds a special certificate of authority under this chapter must comply with all quality of care requirements for plans adopted by commissioner rule.

[Reserves Sections 1510.054–1510.100 for expansion.]

SUBCHAPTER C. OPERATION OF CROSS BORDER HEALTH BENEFIT PLANS

Sec. 1510.101. **MEDICAL DIRECTOR.** Provides that each plan issuer that offers a plan under this chapter must employ or designate a medical director who is responsible for the provision of quality health care services under the plan. Provides that a medical director authorized under this section must be licensed to practice medicine in this state, or for health care services provided only in Mexico, must hold the appropriate credentials under Mexican law to practice medicine in Mexico.

Sec. 1510.102. **COVERAGE FOR CERTAIN MINIMUM HEALTH CARE BENEFITS.** (a) Defines "minimum health care benefit."

(b) Provides that a plan issuer that holds a special certificate of authority under this chapter must provide coverage in this state in its plan for a minimum health care benefit if the plan's medical director determines that it is not possible to provide coverage for the benefit in Mexico.

(c) Authorizes the commissioner by rule to designate any other benefit required by Subtitle E (Benefits Payable Under Health Coverages), Title 8, (Health Insurance and Other Health Coverages), Insurance Code, to be a minimum benefit required to be provided by a plan if the commissioner determines that the cost of providing the benefit under the plan is outweighed by need addressed by the benefit.

(d) Provides that except as provided by this section, Subtitle E (Benefits Payable Under Health Coverages), Title 8 (Health Insurance and Other Health Coverages), Insurance Code, does not apply to a plan.

Sec. 1510.103. **COVERAGE FOR PRESCRIPTION DRUGS.** Requires a plan to cover prescription drugs if that coverage is required by commissioner rule.

Sec. 1510.104. **REPORTING REQUIREMENTS.** (a) Requires a plan issuer that holds a special certificate of authority under this chapter to comply with the reporting requirements adopted under Subchapter B (Health Benefit Plan Provider Reporting), Chapter 38 (Data Collection and Reports), Insurance Code.

(b) Requires the plan issuer to submit an annual report regarding the issuer's plan to TDI. Provides that the annual report must be in the form prescribed by the commissioner and must include certain information.

(c) Authorizes the commissioner by rule to adopt additional reporting requirements for plan issuers that operate plans as necessary to implement this chapter and protect the public welfare.

Sec. 1510.105. ADVERTISING RELATING TO CROSS BORDER HEALTH BENEFIT PLAN; REQUIREMENTS; DEPARTMENT OVERSIGHT. (a) Authorizes a plan issuer that holds a special certificate of authority under this chapter to advertise regarding the issuer's plan.

(b) Authorizes the commissioner to adopt rules regarding advertising for plans only as necessary to prohibit false, misleading, or deceptive practices.

(c) Provides that with respect to a plan under this chapter, the business of insurance in this state includes using, creating, publishing, mailing, or disseminating in this state an advertisement relating to any act that constitutes the business of insurance under Section 101.051 (Conduct that Constitutes the Business of Insurance), Insurance Code.

(d) Authorizes a plan issuer that holds a special certificate of authority under this chapter to use an advertisement described by Subsection (a) only if the plan issuer meets certain requirements.

(e) Prohibits a plan issuer from engaging in certain actions.

(f) Requires TDI to take certain steps if TDI has reason to believe that a plan issuer has engaged in an act prohibited by Subsection (e).

[Reserves Sections 1510.106–1510.150 for expansion.]

SUBCHAPTER D. DISCIPLINARY ACTIONS AND ENFORCEMENT

Sec. 1510.151. GENERAL PROVISIONS. Authorizes the commissioner to revoke a special certificate of authority issued under this chapter or otherwise discipline a plan issuer that holds a special certificate of authority for a violation of this chapter or another insurance law of this state. Provides that a disciplinary action under this section is subject to Subtitle B, Title 2.

Sec. 1510.152. FRAUDULENT ACTIVITIES. (a) Requires the insurance fraud unit to investigate any fraudulent insurance acts regarding the marketing and operation of a plan in the manner prescribed by Chapter 701 (Insurance Fraud Investigations), Insurance Code, for other fraudulent insurance acts.

(b) Authorizes the commissioner, if the commissioner has reason to believe a person has engaged in, is engaging in, has committed, or is about to commit a fraudulent insurance act regarding a plan, to conduct any investigation necessary inside or outside this state to determine whether the act or offense occurred or aid in enforcing laws relating to fraudulent insurance acts or insurance fraud. Authorizes the commissioner to investigate activities occurring anywhere in a service area designated under Section 1510.003 to the extent authorized by the appropriate authorities of Mexico, in conducting an investigation under this subsection.

ARTICLE 2. CONFORMING AMENDMENTS

SECTION 2.001. Amends Subchapter F, Chapter 841, Insurance Code, by adding Section 841.2571, as follows:

Sec. 841.2571. CROSS BORDER HEALTH BENEFIT PLAN. Authorizes an insurance company authorized to engage in the business of insurance under this chapter to offer and provide plans in the manner provided by Chapter 1510.

SECTION 2.002. Amends Subchapter F, Chapter 842, Insurance Code, by adding Section 842.2571, as follows:

Sec. 842.2571. CROSS BORDER HEALTH BENEFIT PLAN. Authorizes a group hospital service corporation to offer and provide plans in the manner provided by Chapter 1510.

SECTION 2.003. Amends Section 843.107, Insurance Code, as follows:

Sec. 843.107. INDEMNITY BENEFITS; POINT-OF-SERVICE PROVISIONS. Includes a point-of-service plan under Subchapter A (Blended Contracts), Chapter 1273 (Point-of-Service Plans), Insurance Code, rather than Article 3.64, in the list of items a health maintenance organization (HMO) is authorized to offer. Provides that this section applies to a plan offered by an HMO only as provided by commissioner rule. Makes a conforming change.

SECTION 2.004. Amends Subchapter D, Chapter 843, Insurance Code, by adding Section 843.114, as follows:

Sec. 843.114. CROSS BORDER HEALTH BENEFIT PLAN. Authorizes an HMO licensed to provide basic health care services under this chapter to offer and provide plans in the manner provided by Chapter 1510. Provides that an HMO has all of the powers and authorities granted under this subchapter in arranging for or providing a plan. Provides that an HMO that offers a plan must contract with sufficient providers and physicians to ensure that all health care services for which coverage is provided will be reasonably available and accessible.

SECTION 2.005. Amends Section 1201.003(d), Insurance Code, to include a plan subject to Chapter 1510, except as provided by commissioner rule, in the list of items this chapter does not apply to.

SECTION 2.006. Amends Section 1251.007, Insurance Code, to include a plan subject to Chapter 1510 in the list of items this subchapter and Subchapters B-I (Group Accident and Health Insurance: Eligible Policyholders, Group Accident and Health Insurance: Required Provisions, Group Accident and Health Insurance: Coverage for Dependents, Group Accident and Health Insurance: General Provisions, Continuation or Conversion Privilege on Termination of Coverage Under Group Policy, Continuation of Group Coverage for Certain Family Members and Dependents, Blanket Accident and Health Insurance: Eligible Policyholders, and Blanket Accident and Health Insurance: General Provisions), Insurance Code, do not apply to, except as provided by commissioner rule.

SECTION 2.007. Amends Section 1271.005, Insurance Code, by adding Subsection (f), to provide that Chapter 1510 applies to an HMO that issues a cross border health benefit plan.

SECTION 2.008. Amends Subchapter A, Chapter 1273, Insurance Code, by adding Section 1273.006, to read as follows:

Sec. 1273.006. CROSS BORDER HEALTH BENEFIT PLAN. Provides that this chapter applies to a plan offered by an insurer only as provided by commissioner rule.

SECTION 2.009. Amends Subchapter A, Chapter 1301, Insurance Code, by adding Section 1301.009, to read as follows:

Sec. 1301.009. CROSS BORDER HEALTH BENEFIT PLAN. (a) Authorizes an insurer that offers a preferred provider (PPO) benefit plan under this chapter to offer and provide a plan through a preferred provider (PPO) network. Provides that the insurer must comply with requirements adopted by the commissioner under Chapter 1510.

(b) Provides that an insurer that offers a plan through a PPO plan must contract with sufficient health care providers, institutional providers, and physicians to ensure that all health care services for which coverage is provided will be reasonably available and accessible.

SECTION 2.010. Amends Section 1506.002, Insurance Code, by adding Subsection (c), to define "health benefit plan."

SECTION 2.011. Amends Subchapter A, Chapter 1506, Insurance Code, by adding Section 1506.008, as follows:

Sec. 1506.008. ELIGIBILITY OF CERTAIN INDIVIDUALS FOR COVERAGE UNDER CROSS BORDER HEALTH BENEFIT PLAN. Provides that an individual who is not a legally domiciled resident of this state is eligible for coverage from the pool if the individual meets certain conditions, notwithstanding Section 1506.152(a) (Eligibility for Coverage). Prohibits the commissioner from imposing assessments as provided by Subchapter F (Assessments of Operation for Pool), Chapter 1506 (Texas Health Insurance Risk Pool), Insurance Code, with respect to plans unless the commissioner determines under Subsection (a) to extend eligibility under the pool to individuals who are not legally domiciled as residents of this state.

ARTICLE 3. TRANSITION; EFFECTIVE DATE

SECTION 3.001. Requires TDI to conduct a study to determine certain information. Requires the commissioner to report the findings of the study conducted under this section to the governor, the lieutenant governor, the speaker of the house of representatives, and the Legislative Budget Board, on or before January 1, 2011. Requires the Health and Human Services Commission and any other state agency to cooperate with TDI as necessary to implement this section. Provides that this section expires September 1, 2011.

SECTION 3.002. Requires the commissioner to adopt rules as necessary to implement Chapter 1510, Insurance Code, as added by this Act, not later than December 31, 2007.

SECTION 3.003. Provides that this Act applies only to a plan, as defined by Chapter 1510, Insurance Code, as added by this Act, that is prospective. Prohibits a plan issuer from offering a plan, as defined by Chapter 1510, Insurance Code, as added by this Act, before January 1, 2008.

SECTION 3.004. Provides that to the extent of any conflict, this Act prevails over the Act of the 80th Legislature, Regular Session, 2007, relating to nonsubstantive additions to and corrections in enacted codes (the general code update bill), and over the Act of the 80th Legislature, Regular Session, 2007, relating to nonsubstantive additions to and corrections in the Insurance Code (update of the Insurance Code).

SECTION 3.005. Effective date: September 1, 2007.